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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NUMBER: A 45/2024

DPP REF. NUMBER: 10/2/5/1/3-PA 5/2024

Date: 29 July 2025

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHERS JUDGES: YES/NO
- (3) REVISED

9/10/2025

DATE

SIGNATURE

In the matter between:

ALPHEUS MATHOUSAND PAPO

APPELLANT

and

THE STATE

RESPONDENT

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 2025.

JUDGMENT

DU PLESSIS, AJ (with BAQWA J concurring):

INTRODUCTION

- 1.1. This is an appeal against both conviction and sentence. The appellant, Mr Alpheus Mathousand Papo (*“the appellant”*), was tried in the Pretoria Regional Court on two counts of rape arising from incidents that occurred in Mamelodi during 2013 and 2016.
- 1.2. The complainant, whom we shall refer to as *M* in order to protect her identity, was a minor child at the time of the alleged offences. She was seven years old during the first incident in 2013 and ten years old during the second incident in 2016.
- 1.3. After a full trial, the Regional Magistrate convicted the appellant on both counts and imposed an effective sentence of life imprisonment. In addition, the appellant was declared unfit to possess a firearm in terms of Section 103 of the Firearms Control Act 60 of 2000.
- 1.4. The appellant now appeals to this Court against his conviction and sentence. His appeal lies as of right in terms of Section 309 of the Criminal Procedure Act 51 of 1977, read with Section 10 of the Judicial Matters Amendment Act 42 of 2013.
- 1.5. The central issue before us is whether the Regional Magistrate correctly accepted *M*'s testimony as credible and reliable, and whether the conviction and sentence ought to stand.

BACKGROUND

2.

- 2.1. At the time of the alleged incidents, *M* resided with her mother and siblings in Mamelodi, not far from the home of the appellant. The appellant was a known member of the community and lived in close proximity to *M*'s household. Their families were acquainted, and *M* frequently interacted with the appellant's children. Although *M* and the appellant's children did not attend the same school, they were friends and would spend time together in and around the appellant's home.
- 2.2. This familiarity created a context in which *M* would, on occasion, be sent by her mother to the appellant's house, either to play with the appellant's children or to deliver messages. The evidence of *M*'s mother confirmed that she regarded the appellant's household as a safe environment and did not consider it unusual that her daughter should go there.

- 2.3. It was against this backdrop of neighbourhood familiarity and trust that the two incidents forming the subject of the charges were alleged to have occurred. According to *M*, the appellant took advantage of these circumstances to perpetrate the offences inside his home.
- 2.4. For several years following these events, *M* did not disclose what had happened. The record reflects that she experienced difficulty in speaking about the incidents, and she carried the burden silently. It was only after she moved to live with her aunt in Tafelkop in 2019 that the matter came to light. There, in the care of relatives and while engaging with social workers, *M* disclosed for the first time that she had been subjected to sexual abuse by the appellant.
- 2.5. The disclosure arose in circumstances where *M* sought help and support after leaving her mother's home. In the process of explaining her background and reasons for leaving, she confided in her aunt and later in the social workers about what the appellant had done to her years earlier. This disclosure prompted further investigation and ultimately led to the charges being laid against the appellant.
- 2.6. To consider whether the conviction and sentence should stand we consider the evidence led in the court *a quo*.

M'S EVIDENCE

3.

- 3.1. *M* gave her testimony in camera, assisted by an intermediary. She was a teenager at the time of the trial, but she spoke of events that occurred when she was much younger. She was seven years old when the first incident took place in 2013, and ten years old at the time of the second incident in 2016. The court was acutely aware that she was a child witness recounting traumatic events from several years earlier, and her evidence was approached with the necessary caution.
- 3.2. *M* testified that on a day in 2013, when she arrived home after school, the appellant sent her to the shop to buy cooldrink. She was familiar with the household because she was friends with the appellant's children and often went there to play. On that particular occasion, once inside, the appellant called her into his bedroom.

- 3.3. She recounted that the appellant closed the door, pushed her hard onto the bed, and penetrated her. She described the pain she felt, and that she screamed. The appellant then tied both her hands and feet to the bed using the children's skipping rope. He then penetrated her a second time. She states that he gave her R50.00 and sent her home with instructions to keep quiet. She remembered leaving the house in discomfort and that she was crying. When confronted by her mother she said she had fell. She stated that afterwards she struggled to walk properly but told her mother that she felt pain "in front". Unfortunately, her mother thought she is complaining of urinary infection and simply bought her cream at Shoprite.
- 3.4. When asked why she did not report the matter immediately, M explained that she was afraid her mother would be angry with her or would not believe her. She also said that she felt ashamed and did not know how to speak about what had happened.
- 3.5. During cross-examination, M was asked about her evidence that her mother noticed she had trouble walking around this time. M confirmed that she had been in pain but reiterated that she did not disclose the true cause.
- 3.6. The second incident took place about three years later, in 2016, when M was ten years old. M testified that on that day the appellant called her to his house. Initially, she did not want to go. When her reluctance was noticed by her mother, her mother scolded her and told her that she must respect elders and respond when called by an adult. Out of deference to her mother's instruction, she eventually went to the appellant's home.
- 3.7. When she arrived, the appellant asked her to go to the shop to buy cigarettes for him. She complied, went to the shop, and then returned to his house. Upon her return, she found the appellant in the process of taking a bath. He instructed her to enter his room. She refused. At that point, the appellant left the bathroom, came to where she was, and physically pulled her into the room.
- 3.8. According to her evidence, the appellant undressed her and when she complained he slapped her and pressed her mouth shut. He then proceeded to penetrate her, "with power " (page 52 line 18 of the record)
- 3.9. Under cross-examination, M was questioned extensively about the detail of her allegations and the circumstances surrounding both incidents. Defence counsel pressed her on why she had not disclosed the incidents immediately to her mother or grandmother,

and why it took until 2019 — several years later — before the matter was reported.

- 3.10. *M* repeated that she was scared of her mother's reaction. She explained that she feared her mother would be angry with her or would not believe her. She also stated that she felt ashamed and did not know how to put into words what had happened to her. The trial court accepted that these were not unusual responses for a young child who had experienced trauma, and that her failure to disclose at the time did not, of itself, render her testimony unreliable.
- 3.11. The defence attempted to suggest that *M* had fabricated the allegations or confused the identity of her alleged abuser. Reliance was placed on a reference in Dr Ntsabeleng's notes, where *M* apparently spoke of being assaulted by a "non-adult male." Counsel argued that this did not describe the appellant, who was an adult male at the time. *M* maintained, however, that it was indeed the appellant who had assaulted her, and the magistrate ultimately accepted that her account, given in direct evidence, outweighed any ambiguity in the doctor's note.
- 3.12. Another point raised in cross-examination was an alleged contradiction about an uncle. At one stage, *M* stated that she had left home due to assaults by an uncle. Her aunt and grandmother both testified that no such uncle was living with her at the time. The magistrate recognised this inconsistency but found that it did not undermine the core of her evidence regarding the appellant. Rather, it illustrated the confusion and possible miscommunication of a young child trying to describe a difficult home environment.
- 3.13. Defence counsel also highlighted that *M* had, in cross-examination, referred to other incidents beyond those charged — such as the appellant allegedly touching her private parts under a pillow in the presence of her siblings. These incidents were not included in the charges and were portrayed as evidence of fabrication. The magistrate, however, viewed this as further indication of the ongoing abuse *M* described, albeit not formally charged, and as consistent with her central allegation that the appellant repeatedly took advantage of her.
- 3.14. Questions were also put to *M* regarding the frequency of the incidents. She had told her aunt that the assaults had happened "many times," whereas the charge sheet only referred to two occasions, in 2013 and 2016. The defence submitted that this contradiction showed unreliability. The trial court accepted,

however, that a child might use phrases like “*many times*” loosely to indicate that the trauma was repeated, even though the prosecution had only charged two counts based on her clearest recollections.

- 3.15. As M gave her testimony, she was at times hesitant and visibly distressed. There was a particular moment when she became overwhelmed, started to cry and proceedings had to be paused. The magistrate allowed her time to recover before continuing. The visible distress was consistent with the trauma she described. The court noted that her crying was not prompted by questioning about peripheral matters, but occurred when she was recounting the incidents themselves. The trial court took this as a strong indication of the authenticity of her evidence rather than fabrication.
- 3.16. M remained consistent on the essential details: that the appellant raped her twice on the first occasion when she was seven, and once when she was ten. Her account of being tied up and of being in pain after the first incident, and of being slapped during the second, remained steady despite the lengthy cross-examination.
- 3.17. While certain aspects of her evidence were challenged – including the timing of disclosure and some peripheral contradictions – her identification of the appellant as the perpetrator was unwavering. She described the layout of his house and room in detail, leaving little doubt that she was familiar with the setting in which the events occurred.
- 3.18. Despite these challenges, M did not waiver on the essential facts: that the appellant raped her twice, once when she was seven and again when she was ten. Her account was consistent on the identity of the perpetrator, the location, and the manner in which the offences occurred, including her being tied up during the first incident.
- 3.19. The trial court evaluated her evidence against the applicable cautionary rules for single and child witnesses. It found that while there were peripheral inconsistencies and delays in disclosure, the core of her testimony was clear, convincing, and corroborated in material respects by her subsequent disclosure, her distressed demeanour in court, and her family’s observations of her behaviour at the time.

EVIDENCE OF THE MOTHER, AUNT AND GRANDMOTHER

4.

The Evidence of the Mother

- 4.1. *M*'s mother, Ms M[...] M[...], testified that at the time of the first incident in 2013, *M* was still a young child. She confirmed that she knew the appellant and regarded his household as familiar and safe. It was not unusual for her to send *M* to his house, either to call his children or deliver messages.
- 4.2. She recalled that during that period *M* sometimes struggled to walk and appeared to be in pain, though she could not identify a cause. She also observed behavioural changes in her daughter, such as bedwetting which had started when *M* was very young and continued intermittently. At the time, she did not connect these signs with sexual abuse.
- 4.3. Under cross-examination, it was put to her that her failure to investigate further undermined the reliability of her daughter's version. She conceded that she had not taken *M* for medical examination at the time. Nevertheless, her evidence was consistent in confirming that *M* displayed physical difficulties around the period of the first incident.

The Evidence of the Aunt

- 4.4. *M* later moved to live with her aunt, Ms F[...] M[...], in Tafelkop in 2019. Ms F[...] testified that it was during her stay there that *M* first disclosed the abuse. According to her, *M* confided in her that the appellant had raped her on more than one occasion.
- 4.5. Ms F[...] said that *M* was visibly upset when speaking about these events and that her disclosure was not the product of suggestion or leading questions. She explained that *M* spoke of incidents that had taken place when she was very young, including during her early school years.
- 4.6. Defence counsel sought to highlight that Ms F[...]’s account of *M* saying the assaults occurred “many times” contradicted the two incidents charged in the indictment. Ms F[...] stood by her testimony, insisting that she was simply relaying what *M* had told her. The trial court noted this potential inconsistency but accepted that a child might describe repeated trauma in broad terms, even if the prosecution selected two specific counts for prosecution.

The Evidence of the Grandmother

- 4.7. The complainant's grandmother, Ms L[...] M[...], also testified. Her evidence was primarily directed at rebutting a suggestion raised during cross-examination of *M*, namely that she had run away from home because of assaults by an uncle. Ms L[...] M[...] stated unequivocally that no such uncle resided in the household at the time.
- 4.8. Ms L[...] M[...] also confirmed that *M* had not disclosed the incidents to her during the relevant period. Like the mother, she did not suspect abuse, although she had noticed *M* was a quiet child who sometimes appeared troubled.
- 4.9. The defence attempted to use her evidence to illustrate contradictions in *M*'s account of why she left home. The trial court accepted that there were discrepancies but did not consider them material enough to discredit her evidence of abuse at the hands of the appellant.

Medical Evidence

- 4.10. The State called Dr L.K. Ntsabeleng, the medical practitioner who examined *M*. He testified that he had taken a medical history from *M* and recorded her account of sexual assault. In his notes, he captured that *M* described being sexually assaulted by a "non-adult male person."
- 4.11. On clinical examination, the doctor found signs consistent with previous sexual penetration. He explained that the injuries and findings were not recent but indicated past sexual abuse.
- 4.12. Dr Ntsabeleng confirmed that while physical evidence of older abuse may not always be conclusive, the state of *M*'s genitalia suggested that penetration had occurred at some earlier stage in her young life.
- 4.13. The defence placed heavy reliance on the doctor's note describing the assailant as a "*non-adult male*." It was argued that this contradicted *M*'s direct evidence implicating the appellant, who was an adult male at the time of the alleged offences.
- 4.14. Counsel also argued that the medical findings were non-specific and could not, of themselves, prove that the appellant was the perpetrator of the alleged assaults. The defense contended that

the absence of more precise dating of the injuries weakened the probative value of the medical evidence.

- 4.15. This concluded the evidence for the state. The defense proceeded to call the accused and his wife.

Evidence of the Appellant ML Papo

- 4.16. The appellant, Mr Alpheus Mathousand Papo, elected to testify in his own defence. He confirmed that he resided in Mamelodi during the period when the alleged incidents were said to have occurred and that he knew the complainant (*M*) through her friendship with his children.
- 4.17. The appellant denied both incidents of rape in unequivocal terms. He testified that he never at any stage engaged in sexual activity with the complainant. He asserted that her allegations were fabricated or mistaken.
- 4.18. In his evidence in chief, he described himself as a family man with children of his own, who lived in the same neighbourhood as the complainant's family. He emphasised that he regarded *M* as a child who frequently visited his home to play with his children, and that such visits were always in the ordinary course of neighbourly interaction.
- 4.19. The appellant suggested that the complainant's allegations might have been influenced by others after she left her mother's home to live with her aunt in Tafelkop. He speculated that animosity between family members might have played a role in her making accusations against him.
- 4.20. He stressed that during the years in question there were always other people in or around his home, and it would not have been possible for him to commit such offences unnoticed.
- 4.21. He relied on the fact that the allegations surfaced only many years later, suggesting that the delay itself demonstrated their unreliability.
- 4.22. Under cross-examination, the appellant remained adamant in his denials, but his manner of answering questions was at times evasive. While he responded quickly to direct questions of denial ("*I did not do it*"), he struggled when confronted with specific contextual details, such as where his wife and children were at the times when *M* alleged the incidents occurred.

- 4.23. The State pressed him on the complainant's detailed description of his bedroom and the fact that she had testified to being tied with a skipping rope. His response was to dismiss the allegations as "*stories*" or "*fabrications*" without providing an alternative explanation. This reluctance to engage with detail detracted from his credibility.
- 4.24. When challenged with the complainant's evidence that she had difficulty walking after the first incident, and her mother's corroboration of this, the appellant made no concessions. He did not acknowledge that the complainant displayed such behaviour, even when put to him that her mother's testimony was clear on this point. His refusal to concede even minor or neutral facts reflected poorly on his reliability.
- 4.25. The appellant also struggled when asked why *M* would falsely implicate him. He speculated vaguely about family influence but was unable to provide a coherent motive. The absence of a plausible explanation for why a child would make such serious allegations weakened his defence.
- 4.26. On his reliability as a historian, the appellant was hampered by the lapse of time. The incidents were alleged to have occurred in 2013 and 2016, yet his testimony was given in 2023. While the passage of time might explain lapses in memory, his account did not reveal neutral lapses but rather blanket denials, which diminished his credibility.
- 4.27. The court observed that he failed to make concessions where it would have been reasonable to do so, such as acknowledging that *M* was indeed often at his home. His unwillingness to concede obvious or uncontested facts created the impression that he was defensive and inflexible rather than truthful.
- 4.28. The appellant's evidence in chief amounted to categorical denials unsupported by detail. In cross-examination, his manner of answering was defensive and occasionally evasive. His reliability was undermined by his inability to provide an alternative narrative for why the complainant would accuse him, and by his refusal to make concessions even on peripheral matters.
- 4.29. The contradictions in his evidence were less about discrepancies in his own account and more about his failure to respond meaningfully to the complainant's detailed testimony. Given the passage of time, the court considered whether his memory might have been affected, but it concluded that his difficulties were not lapses of memory but rather a strategy of blanket denial.

Evidence of Mrs A Papo

- 4.30. The appellant's wife, Ms A. Papo, was called as a defence witness. She testified that she lived with her husband and their children in Mamelodi during the years in question.
- 4.31. She stated that she knew the complainant as a friend of her children, who occasionally visited their home. She said that she was often present in the household and that she had never observed any conduct by her husband that suggested impropriety towards the complainant.
- 4.32. Ms Papo described her husband as a family-oriented person who spent most of his time at home. She confirmed that their home was usually busy with children and visitors, and she suggested that it would have been impossible for her husband to commit such offences unnoticed.
- 4.33. She further testified that she could not recall any occasion when the complainant appeared distressed, struggled to walk, or displayed any signs of abuse while at their house.
- 4.34. In cross-examination, Ms Papo conceded that she was not always in the same room as the children, and that she could not account for every moment when the complainant was in the house. She admitted that there might have been occasions when her husband was alone with the children.
- 4.35. She was asked about the complainant's testimony that the first incident occurred when the appellant tied her hands. Ms Papo could not deny that her husband was capable of being alone with *M* at times; she could only insist that she never saw such behaviour.
- 4.36. While her evidence supported the appellant in the sense that she did not observe abuse, it was necessarily limited. She could not speak to what occurred when she was not present, and she admitted that she did not supervise every interaction between her husband and the complainant.
- 4.37. Her testimony also reflected the natural loyalty of a spouse. While this does not in itself discredit her, it reduced the weight of her evidence as independent corroboration.
- 4.38. There were no glaring contradictions between her account and that

of her husband, but her evidence did not significantly strengthen his defence. Her insistence that “*nothing happened*” was, in substance, no more than an extension of his blanket denial.

- 4.39. The court considered whether any omissions or differences in recollection might be explained by the passage of time. Given that several years had elapsed since the events, it was plausible that she had forgotten peripheral details. However, the absence of observed signs of distress in *M*—when other witnesses, such as the complainant’s mother, recalled such signs—was noted as a weakness.
- 4.40. The value of Ms Papo’s testimony was limited. It demonstrated that she never personally observed abuse, but it did not exclude the possibility that the appellant committed the offences when she was not present. Her evidence reflected the natural perspective of a spouse defending her husband rather than independent corroboration of his account.
- 4.41. The appellant and his wife presented a united denial of the allegations. However, their evidence was characterised by generalised denials, limited detail, and an absence of plausible alternative explanations.
- 4.42. The appellant’s own testimony was weakened by his evasive manner, refusal to concede neutral facts, and reliance on speculation about motives. His wife’s testimony, while consistent with his, added little beyond loyalty and the absence of her personal observation.
- 4.43. In contrast to the complainant’s detailed and emotionally compelling evidence, the appellant’s and his wife’s accounts lacked depth and carried limited probative value. The passage of time did not explain this deficit; rather, it underscored the reliability of the complainant’s enduring memory of traumatic events compared to the defence’s vague and defensive stance.

THE TRIAL COURT’S EVALUATION

5.

- 5.1. The Regional Magistrate approached *M*’s testimony mindful that a cautious approach is required when dealing with a single witness and, in particular, a child witness. The court cited the principle that while caution is necessary, such evidence should not be approached with undue suspicion. The ultimate test remains

whether the evidence is credible and reliable, and whether, when considered with the rest of the record, it proves guilt beyond reasonable doubt.

- 5.2. The magistrate accepted that *M* was a young child at the time of the alleged incidents and that her delayed disclosure, hesitancy, and occasional inconsistencies were understandable features of a child attempting to recount traumatic experiences years later.
- 5.3. The delayed disclosure was raised as a weakness. The magistrate considered the explanation given by *M*—her fear of her mother’s reaction, her feelings of shame, and her youth at the time. The magistrate accepted that delayed disclosure is not unusual in cases involving child victims of sexual offences and did not regard it as fatal to the State’s case.
- 5.4. The magistrate gave weight to *M*’s demeanour in court. She noted in particular the moment when *M* broke down and cried while describing the incidents. This reaction was interpreted as genuine emotional distress consistent with her account, rather than an attempt at fabrication.
- 5.5. The court also considered that *M*’s account remained consistent in the central respects: that the appellant raped her on two occasions in his bedroom, once when she was seven and again when she was ten, and that she suffered pain and humiliation as a result.
- 5.6. Although no eyewitnesses saw the offences, the magistrate found corroboration in several respects:
 - 5.6.1. the mother’s evidence that *M* experienced pain and difficulty walking at the time of the first incident;
 - 5.6.2. the aunt’s testimony regarding *M*’s distressed disclosure in 2019;
 - 5.6.3. the grandmother’s clarification of household circumstances;
 - 5.6.4. the medical evidence of past penetration; and
- 5.7. The magistrate held that these factors, considered together, provided sufficient assurance of the reliability of *M*’s evidence.
- 5.8. The magistrate carefully recorded the appellant’s testimony. His evidence was, in essence, a bare denial of the complainant’s allegations, coupled with speculation that the complainant had been influenced by her family or social workers. The magistrate observed his demeanour, noting that while he was firm in his denials, he was evasive when pressed on detail. He failed to give

direct answers to questions regarding the complainant's description of his room, her evidence of being tied, and her physical pain after the first incident.

- 5.9. In evaluating his reliability, the magistrate applied the approach endorsed in *S v Chabalala* 2003 (1) SACR 134 (SCA), namely that the evidence must be weighed holistically—placing the appellant's version against that of the State witnesses—and that credibility, reliability, and probabilities must all be considered. She concluded that the appellant's evidence was unconvincing and that his blanket denials did not raise a reasonable doubt.
- 5.10. In relation to the evidence of Ms A. Papo, the magistrate accepted that she had never observed abuse and that she considered her husband incapable of such conduct. However, the magistrate noted the obvious limitations of her evidence: she could not account for every moment the complainant was in the household, and she conceded under cross-examination that there were occasions when her husband was alone with the children.
- 5.11. The magistrate's reasoning reflects that she was alive to the effect of time on memory. She expressly considered whether the contradictions and delays could be attributed to the passage of years. However, she distinguished between the peripheral contradictions in the complainant's account and the appellant's total denial, which lacked plausibility and detail.
- 5.12. The trial court concluded that the State had discharged its burden of proof. Despite peripheral contradictions and the delay in reporting, the core of *M's* testimony was credible, consistent, and corroborated. The appellant was accordingly convicted on both counts of rape.

THE APPEAL

6.

- 6.1. In her heads of argument for the appellant, Advocate Simpson advanced a multi-pronged attack on the conviction. She emphasised that the complainant (*M*) was a single child witness testifying years after the alleged incidents, and that her evidence should therefore have been approached with heightened caution.
- 6.2. Counsel identified what she considered material contradictions in *M's* testimony and her reported statements:

- 6.2.1. *M's* disclosure to her aunt that the abuse occurred "many times," as opposed to the two specific counts charged;
 - 6.2.2. the reference to leaving her mother's home because of an "*uncle*" who assaulted her, which her grandmother denied; and
 - 6.2.3. the note made by Dr Ntsabeleng recording that the complainant said she was assaulted by a "*non-adult male*."
- 6.3. She further argued that the complainant's failure to disclose the alleged abuse at the time, despite opportunities to do so to her mother or grandmother, undermined her credibility. According to counsel, the delayed disclosure in 2019 was inconsistent with the behaviour one would expect of a genuine victim.
- 6.4. Advocate Simpson also attacked the weight placed by the magistrate on the complainant's demeanour in court, particularly her crying while testifying. Counsel submitted that while emotional display may evoke sympathy, it cannot substitute for proof beyond reasonable doubt.
- 6.5. In support of these submissions, reliance was placed on authority such as *S v Chabalala* 2003 (1) SACR 134 (SCA), *S v Van Aswegen* 2001 (1) SACR 97 (SCA), and *S v Janse van Rensburg* 2009 (2) SACR 216 (C), which collectively affirm that credibility must be assessed holistically, contradictions must be evaluated in context, and the State bears the burden of proof beyond reasonable doubt.
- 6.6. On a proper reading of the Magistrate's judgment one finds that her reasoning is consistent with authority in rape cases involving minors. In *S v Jackson* 1998 (1) SACR 470 (SCA), the SCA abolished the cautionary rule specific to sexual offences, holding that such evidence must be treated like any other, subject only to the ordinary tests of credibility and reliability.
- 6.7. The alleged contradictions were peripheral and did not undermine the complainant's central account of two rapes by the appellant. The Magistrate distinguished between discrepancies that reflect natural childhood confusion or the imprecision of memory over time, and inconsistencies that strike at the heart of the case. The contradictions identified by counsel fell into the former category.
- 6.8. The reference to an uncle did not undermine *M's* direct allegations against the appellant, especially in light of her grandmother's

evidence that no such uncle resided with them. Similarly, the “*many times*” statement was interpreted by the doctor as a child’s way of describing repeated trauma, even if the charges focused on the two clearest episodes.

- 6.9. Regarding the doctor’s note, the ambiguous phrase “*non-adult male*” could not outweigh the complainant’s direct testimony implicating the appellant.
- 6.10. On delayed disclosure, the magistrate considered the complainant’s explanation—that she feared her mother’s reaction, felt ashamed, and did not understand how to disclose what had happened. She also took account of the evidence of the social workers, who confirmed that *M* remained hesitant and distressed years later when speaking of the abuse.
- 6.11. As to demeanour, the magistrate was aware of the dangers of over-emphasising emotional responses, but she found that the complainant’s crying in court was consistent with the authenticity of her account. Importantly, she did not treat demeanour in isolation but as part of the broader evidentiary picture, which included corroboration from family members, social workers, and medical findings.
- 6.12. The magistrate’s reasoning demonstrates that the contradictions and delayed disclosure were not ignored; rather, they were contextualised and found not to undermine the reliability of the complainant’s account.
- 6.13. The jurisprudence cited by counsel supports the approach adopted by the magistrate rather than undermining it. In *Chabalala*, the SCA held that evidence must be evaluated holistically, weighing elements that support guilt against those that suggest innocence. This is precisely the approach the magistrate applied.
- 6.14. In *Van Aswegen*, the SCA confirmed that credibility cannot be determined in isolation but must be measured against the probabilities. The magistrate measured the complainant’s testimony against corroborative evidence and found it consistent.
- 6.15. *Janse van Rensburg* emphasised the need to consider reliability as well as credibility, and that contradictions do not necessarily displace the State’s case unless they raise a reasonable doubt. The magistrate’s conclusion that the contradictions here were peripheral and explainable is aligned with this principle.
- 6.16. It is well established that a trial court’s credibility findings enjoy deference on appeal because the presiding officer has the

advantage of observing the witnesses' demeanour and manner of testifying. See *S v Francis* 1991 (1) SACR 198 (A) at 204c–f, where it was held that an appellate court will not readily interfere with such findings unless they are clearly wrong.

- 6.17. In this case, the magistrate had the benefit of observing the complainant break down in tears when recounting the incidents, her hesitancy in certain areas, and her firmness in others. These observations, coupled with her assessment of the appellant's evasive and defensive manner in cross-examination, placed the magistrate in a strong position to make credibility findings.
- 6.18. The magistrate's conclusions are supported by credible evidence. The complainant's testimony was consistent on the essential points, corroborated by her mother, aunt, grandmother, social workers, and medical evidence. The appellant's version, by contrast, was a bare denial unsupported by detail. His wife's testimony, while consistent with his, added little beyond what could be expected of a loyal spouse.
- 6.19. The magistrate's concerns about the appellant's evasiveness, failure to make concessions, and inability to provide a plausible alternative explanation for the allegations were justified. These are legitimate credibility markers. Her conclusion that the defence evidence did not create a reasonable doubt is therefore well supported.
- 6.20. Advocate Simpson's criticisms invite this Court to re-evaluate credibility afresh. However, absent a misdirection, this Court must be slow to overturn the trial court's findings. The record reveals no such misdirection; on the contrary, the magistrate's approach reflects a careful and balanced evaluation.
- 6.21. While Advocate Simpson correctly identified contradictions and delays in disclosure, these were properly weighed by the magistrate. The trial court distinguished between core and peripheral inconsistencies, considered the impact of time, and found the complainant's evidence credible on the essential allegations.
- 6.22. Counsel's criticism that demeanour was overemphasised is not borne out by the record. The magistrate explicitly relied on a constellation of corroborative evidence—medical findings, testimony of family members, and the doctor—before concluding that the complainant's evidence was reliable.
- 6.23. Accordingly, while Advocate Simpson's submissions were thorough and raised legitimate points for consideration, they do not

establish that the magistrate erred in her evaluation. The magistrate followed the accepted principles in sexual offence cases involving minors and her conclusions are supported by the evidence.

- 6.24. The appellant's counsel presented a careful critique of the trial court's reasoning. However, the magistrate addressed the very points raised in those arguments, applied the correct legal principles, and gave cogent reasons for accepting the complainant's account.
- 6.25. I am satisfied that the magistrate's evaluation withstands scrutiny. The criticisms advanced by Advocate Simpson are not sufficient to demonstrate a misdirection or to undermine the reliability of the trial court's findings. The conviction was justified on the evidence.

COURT'S ANALYSIS ON SENTENCE

7.

- 7.1. In her heads of argument, Advocate Simpson attacked the sentence of life imprisonment as disproportionate. She argued that the magistrate erred in failing to find substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997.
- 7.2. Counsel emphasised that the appellant was a first offender, a father of two children, and a person with stable family circumstances. She contended that these personal factors, taken cumulatively, should have weighed heavily in favour of rehabilitation rather than life-long incarceration.
- 7.3. Advocate Simpson further pointed to the pre-sentence report and the absence of evidence of future dangerousness. She submitted that life imprisonment is reserved for the most heinous cases and that a lengthy but determinate sentence would have been sufficient to meet the objectives of punishment.
- 7.4. She relied on authorities such as *S v Vilakazi* 2009 (1) SACR 552 (SCA), *S v Malgas* 2001 (2) SA 469 (SCA), and *S v GN* 2010 (1) SACR 93 (T), which emphasise proportionality, the necessity of considering the individual circumstances of each case, and the constitutional imperative that punishment must not be grossly disproportionate to the offence.
- 7.5. The magistrate began by setting out the applicable statutory

framework: section 51(1) of Act 105 of 1997 prescribes life imprisonment for the rape of a child under 16 unless substantial and compelling circumstances exist. She referred expressly to the guidelines in *S v Malgas*, stressing that the prescribed sentence is the point of departure and that deviation requires circumstances so compelling that justice would not be served by life imprisonment.

- 7.6. In considering the appellant's personal circumstances, the magistrate noted that he was a first offender and a father of two. However, she held that these factors, while not trivial, were common in many cases of rape and did not reduce his moral blameworthiness.
- 7.7. The magistrate attached significant weight to the gravity of the offences: the repeated rape of a child of seven and then ten years old, aggravated in the first incident by the tying of the complainant's hands. She emphasised the breach of trust and the enduring harm suffered by the complainant.
- 7.8. The pre-sentence report confirmed the appellant's personal history but did not suggest extraordinary circumstances that would justify departure from the prescribed sentence. The victim impact report described the complainant's ongoing trauma, her emotional distress, and the continuing effect on her life. The magistrate found that these factors reinforced, rather than mitigated, the seriousness of the offences. The following evidence that remained uncontested is particularly telling:

"Court: That wetting, when did it start?"

Ms M[...]: She was doing grade R when she started wetting the bed, even now she is still wetting the bed.

Court: Okay, now that she disclosed what happened to her, did she receive any treatment?"

Ms M[...]: Yes.

Court: Is she still on treatment?"

Ms M[...]: No, now she is not going.

Court: What kind of treatment are you talking about?"

Ms M[...]: At Groblersdal Hospital they gave her some pills, those are the ones that she was taking and they would clean her system.

Court: But was she getting or did she get any counselling?"

Ms M[...]: Yes.

Court: Is she still receiving the counselling?"

Ms M[...]: Yes.

Court: And in terms of her behaviour, is she still the same child as she used to be?

Ms M[...]: No.

Court: What have you observed?

Ms M[...]: Now she is always angry.

Court: Yes?

Ms M[...]: And she assaults other children, especially boys.

Court: Yes?

Ms M[...]: And she is out of control.”

- 7.9. The magistrate concluded that there were no substantial and compelling circumstances and imposed life imprisonment.
- 7.10. Advocate Simpson’s central criticism—that the magistrate gave insufficient weight to the appellant’s status as a first offender and his family responsibilities—cannot be accepted. In *S v Malgas* it was made clear that ordinary mitigating factors, even when taken cumulatively, will seldom justify departure from the minimum sentences. They must be truly substantial and compelling. The magistrate correctly applied this principle.
- 7.11. Counsel’s reliance on *S v Vilakazi* was noted. In that case, the SCA cautioned that life imprisonment should not be imposed lightly, and that proportionality remains central. However, *Vilakazi* also confirmed that the rape of young children falls within the gravest category of offences envisaged by the Legislature. Unlike in *Vilakazi*, where the complainant was 15 and the circumstances less aggravated, this case involved repeated rape of a very young child, including restraint during the first assault. The magistrate correctly distinguished this as among the most serious of cases.
- 7.12. The reliance on *S v GN* 2010 (1) SACR 93 (T) was also misplaced. That case emphasised that courts may more readily find substantial and compelling circumstances where life imprisonment is prescribed. But the magistrate did exactly what *GN* requires: she considered whether the appellant’s circumstances, individually or cumulatively, warranted deviation, and concluded they did not.
- 7.13. The pre-sentence report confirmed that the appellant was not a recidivist and had prospects of rehabilitation, but it did not identify extraordinary features. Against this, the victim impact report

graphically illustrated the profound and lasting harm suffered by the complainant. The magistrate was entitled to give weight to the victim's suffering, consistent with *S v Matyityi* 2011 (1) SACR 40 (SCA), which recognised that victims' interests form part of the sentencing triad.

- 7.14. The record reflects that the magistrate expressly referred to *Malgas*, considered the proportionality guidance in *Vilakazi*, and applied the principle that deviation is permitted only where justice requires it. Her reasoning demonstrates fidelity to these authorities.
- 7.15. Far from misdirecting herself, the magistrate considered both the appellant's circumstances and the broader context of the offences. She balanced these against the societal interest in deterring sexual crimes against children, in line with *S v Dodo* 2001 (3) SA 382 (CC), which endorsed the minimum sentencing regime as constitutionally valid.
- 7.16. An appellate court will only interfere with sentence if the trial court committed a material misdirection or if the sentence is so disproportionate as to induce a sense of shock. See *S v Pieters* 1987 (3) SA 717 (A).
- 7.17. In this matter, there is no misdirection. The magistrate identified the correct principles, applied them to the facts, and provided cogent reasons for concluding that no substantial and compelling circumstances were present. The sentence imposed, while severe, is proportionate to the crimes committed and consistent with legislative intent.
- 7.18. The criticisms raised by Advocate Simpson amount to an invitation for this Court to substitute its discretion for that of the trial court. In the absence of misdirection or disproportion, that is not permissible.
- 7.19. The magistrate properly considered the appellant's personal circumstances, the pre-sentence and victim impact reports, and the relevant authorities. Her reasoning reflects the principles set out in *Malgas*, *Vilakazi*, and *Dodo*.
- 7.20. The absence of previous convictions and the appellant's personal background, while mitigating, are not sufficiently compelling to displace the statutory minimum. The sentence of life imprisonment was correctly imposed, and there is no basis for appellate interference.

In the result, I propose that the following order be made:

- 8.1. The appeal against conviction is dismissed.
- 8.2. The conviction and sentence imposed by the Regional Court are confirmed.

DU PLESSIS AJ

SELBY BAQWA
Judge of the High Court
Gauteng Division, Pretoria
I agree

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ADV
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Judgment delivered on: